

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

ROBERT BOLDEN, SR.,

Movant,

v.

UNITED STATES OF AMERICA

Respondent.

:
:
:
:
:
:
:
:
:
:
:

No. 4:10-cv-2288

Judge Jackson

CAPITAL CASE

**PETITIONER’S MEMORANDUM IN SUPPORT OF EX PARTE MOTION FOR AN ORDER DIRECTING
THE BUREAU OF PRISONS TO PERMIT DR. RICHARD DUDLEY TO CONDUCT AN
EVALUATION OF MR. BOLDEN**

Petitioner, Robert Bolden, through undersigned counsel, hereby submits his Memorandum in Support of Motion for an Order Directing the Bureau of Prisons to Permit Dr. Richard Dudley to Conduct an Evaluation of Mr. Bolden.

Background

Petitioner is currently incarcerated following his convictions and sentence of death in United States v. Bolden, 4:02-cr-00557 (E.D. Mo.). On December 16, 2009, this Court appointed undersigned counsel to represent Petitioner in his proceedings under 28 U.S.C. § 2255. Id., Doc. 544. On March 21, 2016, this Court entered an *Order* (Doc. 231) and *Memorandum* (Doc. 230), denying Petitioner’s 2255 Motion without an evidentiary hearing and denying a certificate of appealability. On April 18, 2016, Petitioner filed his *Motion and Memorandum in Support of Motion to Alter or Amend the Court’s Judgment of March 21, 2016* (Docs. 233, 234), his *Motion to Amend his Motion to Vacate, Set Aside or Correct the Judgment and Sentence Pursuant to 28 U.S.C. § 2255 in Light of Johnson v. United States, 135 S. Ct. 2551 (2015) and Memorandum in Support* (Doc. 235), and his *Amendment to Motion to Vacate, Set Aside or Correct*

the Judgment and Sentence Pursuant to 28 U.S.C. § 2255 in Light of Johnson v. United States, 135 S. Ct. 2551 (2015) (Doc. 236). On July 1, 2016, the government filed its Response to Petitioner's motions (Doc. 241). Mr. Bolden's reply is currently due on October 6, 2016.

As a result of a recent medical emergency, Mr. Bolden was admitted to Union Hospital and treated for kidney failure among other illnesses. While he was being treated at Union Hospital and as a result of his deteriorating health, the Bureau of Prisons elevated Mr. Bolden's care level to four and transferred Mr. Bolden to MCFP Springfield on July 1, 2016.

Argument

In light of Mr. Bolden's deteriorating health and other considerations arising from the status of his habeas proceedings, counsel have begun investigating and developing evidence in support of a possible clemency application.

As the trial and post-conviction evidence demonstrated, Mr. Bolden suffers from cognitive and emotional impairments. He also suffers from Type-1 diabetes and has recently suffered from kidney failure. In addition to impacting his physical health, these illnesses also effect cognitive and emotional functioning. Mr. Bolden has not been evaluated by a mental health professional in over five years. In light of the changes in circumstances, a current evaluation is necessary to fully develop all available avenues for a clemency application.

As this evaluation is reasonably necessary for counsel's representation of Mr. Bolden in clemency proceedings, Petitioner respectfully requests that this Court issue the attached Order directing the Bureau of Prisons to permit Dr. Richard Dudley to conduct an evaluation of Mr. Bolden. 18 U.S.C. §3599(e), (f); *Harbison v. Bell*, 556 U.S. 180, 187-88 (2009). *See also* ABA GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF COUNSEL IN DEATH PENALTY CASES

(rev. ed. 2003), *Guideline* 10.15.2.B. (noting counsel's obligation to conduct a full and adequate investigation pursuant to *Guideline* 10.7 in preparation for clemency application).

WHEREFORE, Petitioner respectfully requests that this Court grant his motion for an order directing the Bureau of Prisons to permit Dr. Dudley to conduct an evaluation of Mr. Bolden.

Respectfully submitted,

/s/ ANNE L. SAUNDERS

ANNE L. SAUNDERS, ESQUIRE
Asst. Federal Public Defender
PA Bar 48458
KELLY D. MILLER, ESQUIRE
Asst. Federal Public Defender
Federal Bar #307889PA
100 Chestnut Street, Suite 300
Harrisburg, PA 17101
Tel: (717) 782-3843
Fax: (717) 782-3966
(anne_saunders@fd.org)
(kelly_miller@fd.org)

/s/ JENNIFER MERRIGAN

JENNIFER MERRIGAN, ESQUIRE
MO Bar #56733
Penn's Landing
PO Box 63928
Philadelphia, PA. 19147
Tel: (816) 695-2214
jenmerrigan@gmail.com

Dated: August 23, 2016

CERTIFICATE OF SERVICE

I, Anne Saunders, hereby certify that on this date I caused the foregoing document to be served on the following person at the location and in the manner indicated below, which satisfies the requirements of the Federal Rules of Civil Procedure:

Via Electronic Email and First Class Mail, postage prepaid

Shane McCullough, Esquire
MCFP Springfield
1900 W. Sunshine Street
Springfield, MO 65807
smuccullough@bop.gov

/s/ ANNE L. SAUNDERS
Asst. Federal Public Defender
PA Bar #48458
100 Chestnut Street, Suite 300
Harrisburg, PA 17101
Tel: 717-782-3843
Fax: 717-782-3966
Anne_saunders@fd.org

Dated: August 23, 2016